

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS**

THOMAS A. SIMONIAN,	)	
	)	
Plaintiff,	)	Civil Action No. 10-cv-1258
	)	
vs.	)	Hon. Robert W. Gettleman
	)	
BP LUBRICANTS USA INC.	)	<b>JURY TRIAL DEMANDED</b>
	)	
Defendant.	)	

**BP LUBRICANTS USA INC.'S NOTICE OF CONSTITUTIONAL CHALLENGE**

Pursuant to Fed. R. Civ. P. 5.1 and N.D. Ill. Local Rule 24.1, notice is hereby given that Defendant BP Lubricants USA Inc. ("BP Lubricants") has challenged the *qui tam* provision in 35 U.S.C. § 292(b) as violating the vesting of "[t]he executive Power" in the President by Article II of the United States Constitution, U.S. Const. art. II, § 1, cl. 1, and the Take Care Clause and the Appointments Clause of Article II of the United States Constitution, U.S. Const. art. II, §§ 2, 3. BP Lubricants raises its challenge as an Affirmative Defense in BP LUBRICANTS USA INC.'S ANSWER TO REALTOR'S COMPLAINT. Pursuant to Federal Rules of Civil Procedure 5.1(a)(2), the undersigned hereby certifies that that on September 13, 2010, DEFENDANT BP LUBRICANTS' NOTICE OF CONSTITUTIONAL CHALLENGE and BP LUBRICANTS USA INC.'S ANSWER TO REALTOR'S COMPLAINT was served on the U.S. Attorney General by certified mail, return receipt requested, at the following address:

United States Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Dated: September 13, 2010

Respectfully submitted,

/s/ Russell E. Levine, P.C.

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Inc.*